IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.106 OF 2006

IN

P.I.L.NO.49 of 2002

Pukhraj Manikchand Jain ...Petitioner

Versus

Mr.Navin Kumar & Ors. ...Respondents

.....

Mr.V.Z.Kankaria for Petitioner.

Mr.A.A.Kumbhakoni, Asso.Advocate General with

Mr.S.K.Chinchalikar, A.G.P. for Respondents 1, 3 & 4.

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CORAM: A.M.KHANWILKAR, J.

MARCH 21, 2006.

P.C.

1. Heard Counsel for the parties.

2. This Petition is filed to initiate contempt action against the Respondents for breach of order dated 7th March 2003. In the first place, the Petition will be barred by limitation having

been filed after one year from the date of order dated 7th March 2003. Mr.Kankaria for Petitioner submits that there is no limitation provided insofar as power of the High Court under Article 215 of the Constitution of India. The Petition does not make reference to the said provision, but even assuming that present Petition is filed invoking Article 215 of the Constitution of India, it is well settled that even with regard to those proceedings, the principle underlying the provisions of Contempt of Courts Act will apply on all fours in view of the dictum of the Apex Court in the case of **Pallav Sheth vs. Custodian & Ors. reported in (2001) 7 SCC 549**.

3. Reverting to the merits of the case, in my opinion, no case for initiating contempt action is made out. The order dated 7th March 2003 in fact rejects the prayer for interim relief made by the Petitioner. Learned Counsel for the Petitioner, however, relies on the latter part of the penultimate paragraph of the order which mentions that meanwhile State Government may consider opening and finalisation of tender process which

had been invited in February 2002. According to him, this fact has been recorded in the order on the basis of the assurance given by the Respondents' Counsel across the bar at the relevant time that the tenders which have been received will be opened and finalised soon. There is nothing in the order to countenance that position. Assuming that such assurance was given, suffice it to observe that there is no direction from the Court to open and finalise the tender process. It is well settled that it is the prerogative of the employer to open and finalise the tender. The employer can cancel the tender process at any stage. Viewed in this perspective also, no case for contempt is made out. Dismissed.

A.M.KHANWILKAR, J.